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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of:	)	
	)	
LIBERTY PRODUCTIONS, A LIMITED PARTNERSHIP (Assignor)	)	File No. BAPH-20040116ACT
	)	
SAGA COMMUNICATIONS OF NORTH CAROLINA, L.L.C. (Assignee)	)	
	)	
For Assignment of License of Station WOXL-FM	)	
	)	
and	)	
	)	
LIBERTY PRODUCTIONS, A LIMITED PARTNERSHIP	)	MM Docket No. 88-577
	)	
For Construction Permit for a New FM Station	)	File No. BPH-19870831MI
	)	
For License to Cover for Station WOXL-FM	)	File No. BLH-20020220AAL
	)	
Facility No. 37242	)	
	)	
Biltmore Forest, North Carolina	)	

To: The Secretary

Attention: Chief, Enforcement Bureau
Chief, Audio Division, Media Bureau

REPLY TO OPPOSITION OF LIBERTY TO SUPPLEMENT

Respectfully submitted,

WILLSYR COMMUNICATIONS, LIMITED PARTNERSHIP

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January 23, 2006

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REPLY TO OPPOSITION OF LIBERTY TO SUPPLEMENT

Willsyr Communications, Limited Partnership ("Willsyr"), by its counsel, pursuant to 47 CFR 1.4 (h) and 1.106 (h), submits its reply to the "Opposition to Further Supplement to Petitions for Reconsideration," filed on January 11, 2006, by Liberty Productions, a Limited Partnership ("Liberty").

Liberty's Failure to Disclose Robert Dungan's Ownership

In its "Supplement" filed on December 27, 2005, Willsyr submitted a "Consent Judgment Equitable Distribution," dated August 19, 1997, Buncombe County District Court (Case No. 95-CVD-5049, between Valerie Klemmer (now Watts), the General Partner of Liberty, and her husband, Robert Dungan. Therein, Klemmer (Watts) and Dungan voluntary agreed that the Liberty partnership entity was marital property and that they each would have a 50% ownership interest in the partnership as an entity.

In its opposition, at pp. 2-4, Liberty contends that the Consent Judgment Equitable Distribution ("ED Judgment") does not actually mean what it says on the face of this judicial decree. According to Liberty, it was the "understanding and intent" of Klemmer (Watts) and Dungan that he did not receive at that time a direct 50% interest in the partnership. Rather, Dungan obtained a right to receive 50% of any monetary proceeds that Klemmer (Watts) might receive in the future.

Liberty's contentions are disingenuous. Under North Carolina law, the actual receipt of a profit is not a necessary prerequisite to consider one a partner. Anticipation of a future

profit suffices. Reddington v. Thomas, 262 S.E.2d 841 (1980).

Accordingly, it makes no difference when one receives the profits to be considered a partner. It is the intent to share profits, whenever they occur, that demonstrates a partnership. Thus, Dungan is and has been a general partner with Klemmer (Watts) in Liberty, regardless of having not yet received any profits. Dungan is a licensed attorney in North Carolina and thus is presumed to know the law.

Moreover, a partnership is demonstrated whenever two or more persons combine their property in a common business or venture under an agreement to share the profits in equal or specified portions. Johnson v. Gill, 68 S.E.2d 788 (1952); Wike v. Wike, 445 S.E.2d 406 (1994). Here, Liberty admitted at footnote 2 that Dungan had put money into the partnership that was considered to be marital property.

Thus, during the marriage and prior to the ED Judgment, Dungan was a general partner of Liberty. Under the ED Judgment, in return for this contribution, Dungan would be entitled to a 50% share of the profits of the partnership, rather than to a repayment of a loan with interest.

In its opposition at pp. 2-3, Liberty contends that assignment of a 50% partnership interest to Dungan would have required the consent of David Murray, its 65% limited partner. Again, Liberty's contentions are disingenuous. In sworn deposition testimony on October 30, 2003, p. 81, lines 2-25, and

p. 82, lines 1-17, Klemmer (Watts) stated that after 1990, she did not consider Murray to be a partner and did not treat him as a partner.

The ED Judgment is a legal decree of a North Carolina court voluntarily and knowingly entered into by Klemmer (Watts) and Dungan. Thus, what is stated on the face of the decree carries an unrebuttable presumption of fact and law. This judicial decree would override any provisions in the partnership agreement that would prohibit an assignment of a partnership interest. Liberty makes no claim that this decree has subsequently been altered, modified, or changed as to its terms.

The ED Judgment, at Section 6 (k), in its Findings of Fact, found that the Liberty partnership was owned by Klemmer (Watts) and Dungan; at Section 9 (k), that the Liberty partnership was part of the marital estate; and at Section 12, that Plaintiff (Dungan) had made "investments" in the partnership; and the ED Judgment clearly and unambiguously states, at pp. 3-4, that "IT IS NOW THEREFORE ORDERED ADJUDGED AND DECREED: that Plaintiff (Dungan) shall receive as his share of the marital estate the following property, free from any right claim or interest of the Defendant (Klemmer): 1. (f) a one half interest in Liberty Productions, a Ltd. Partnership."

It is noteworthy that Dungan received a 50% interest in all the partnership as an entity, rather than 50% of the 35% general partnership interest of Klemmer (Watts). This demonstrates that

in 1997, Klemmer (Watts) did not consider Murray to be a limited partner and did not inform the court that Murray had any interest in the partnership, even a "disputed" or "uncertain" interest.

The ED Judgment expressly decreed that, under North Carolina law, Dungan is a 50% equity owner in Liberty. This 50% interest of Dungan was legally effective at least by August 19, 1997, and has never been altered, modified, or changed in any way.

An express agreement by the parties demonstrates a partnership under North Carolina law. Davis v. Davis, 293 S.E.2d 268 (1982). Here, the express agreement showing a partnership between Klemmer (Watts) and Dungan prior to and after 1997 is a consent decree and judgment approved and entered by the court.

From the filing of its application in 1987 to the present, Liberty has never reported to the Commission that Dungan was or is a 50% general partner or equity owner, or even has a future interest in the partnership profits. It has always represented that Klemmer (Watts) is the sole General Partner with 35% equity and Murray is the sole limited partner with 65% equity.

In its Form 175 to participate in the September 1999 auction for the Biltmore Forest frequency, Liberty made disqualifying misrepresentations as to its actual ownership and its real parties in interest by not disclosing Dungan's 50% ownership interest in the partnership that had been decreed by a North Carolina court, or even disclosing that Dungan has a future interest in the partnership profits, as required by 47 CFR 1.2112 (a)(1). This

disqualifying misrepresentation mandates that Liberty's construction permit and license be revoked.

Dungan's 50% general partnership or equity interest would have, moreover, made Liberty ineligible to participate in the 1999 auction for the Biltmore Forest frequency. Under 47 USC 309 (l)(2), this was a closed auction that was open only to the original applicants for the comparative hearing with their original controlling parties, as stated in their applications. Because the Biltmore Forest auction was won by Liberty, an ineligible bidder, the 1999 auction must be invalidated and a new auction conducted with only eligible bidders.

In its opposition, at pp. 1-2, Liberty claims the ED Judgment has always been a matter of public record since 1997 and that Willsyr should have known about it. However, it was Liberty's obligation under 47 CFR 1.65 to report the ED Judgment to the Commission (within 30 days of the August 19, 1997, decree) since it had a material bearing as to its present and future ownership.

Willsyr became aware of the ED Judgment because it was referenced in a pleading filed by Murray on September 23, 2005, in his state court suit against Klemmer (Watts) and Dungan. This was at the time that a confidentiality order in favor of Liberty had been lifted. Had the ED Judgment been a matter of public record since 1997, Murray would presumably have referenced it earlier in his state court suit that was filed in 2003.

In its Supplement, at p. 3, Willsyr stated that the ED

Judgment had "apparently" been under seal since 1997. Whether it was formally under seal or just tucked away in an obscure corner of the Buncombe County court house is of no import. The ED Judgment was for whatever reason not known or available until after September 2005.

Liberty's Failure to Report David Murray's Change in Ownership

The Liberty tax returns show that Klemmer (Watts) represented to the IRS in 1992 and from 1994 to 2002 that she owned 99% of the equity of the partnership and that Murray owned 1%. However, Liberty represented to the Commission from 1987 to the present that Klemmer (Watts) is the General Partner with 35% of the equity and that Murray is the limited partner with 65% of the equity.

In its opposition, at p. 6, Liberty claims that Klemmer (Watts) filed tax returns showing Murray as a 1% owner because her tax accountant told her to do it that way. According to Liberty, Murray was reported as a 1% owner because his ownership interest was "uncertain" and in "dispute."

However, if Murray's ownership was "uncertain" and in "dispute," this fact should have been reported to the Commission, as required by 47 CFR 1.65. Liberty gives no explanation as to why the Commission was not told about such matters.

In its opposition, at pp. 5-6, Liberty refers to the difference between its claim to the Commission of a 65% ownership for Murray and its claim to the IRS of 1% ownership for Murray as a reporting "discrepancy." This is laughable spin. Moreover, at

no time did Liberty inform the Commission as to the 1% ownership reported to the IRS for Murray, or concede to the Commission that Murray's allegations against it were true.

In its opposition, at p. 4, Liberty claims that it "advised" the Commission in 1999 that Murray share of equity and debt was less than 33%. However, Liberty indicated that it was debt as a result of borrowing funds to bid in the auction that caused Murray to have less than a 33% interest. Liberty made no disclosure that Murray's equity ownership was "uncertain" and in "dispute." See, Liberty Amendment, filed November 10, 1999, Exhibit C, p. 1, sub-section (3). Moreover, Liberty did not "advise" the Commission that Murray had failed to make his share of the capital calls. See, Exhibit C, p. 2, sub-section (b).

In its opposition, at pp. 5-7, Liberty contends that any issue as to Murray's ownership status is res judicata because the Commission has previously considered the matter. However, the Commission has only previously considered this issue based upon incomplete and misleading information from Liberty. See, Liberty Productions, a Limited Partnership, 16 FCC Rcd 12061, paras. 28-31 (2001), where the Commission believed there was no evidence showing that Murray is no longer a 65% limited partner and where it had not been advised by Liberty of any "uncertainty" as to this matter.

The Commission, or the Bureau, has never previously seen the sworn deposition testimony of Klemmer (Watts), at pp. 81-82, where

she states that after 1990 she never considered Murray to be a partner. This directly contradicts her repeated representations to the Commission that Murray is a 65% equity partner and that nothing had changed since the filing of the application in 1987.

The sworn deposition testimony of Klemmer (Watts), at pp. 81-82, demonstrates that she willfully and repeatedly told the Commission something that she knew not to be true. There was no "uncertainty" in her deposition testimony and there was no "dispute" about the matter. She unequivocally and unambiguously stated that Murray was not a partner, not even a 1% partner. This was one of the few matters in her deposition testimony that she was certain about and that she could recall and could remember.

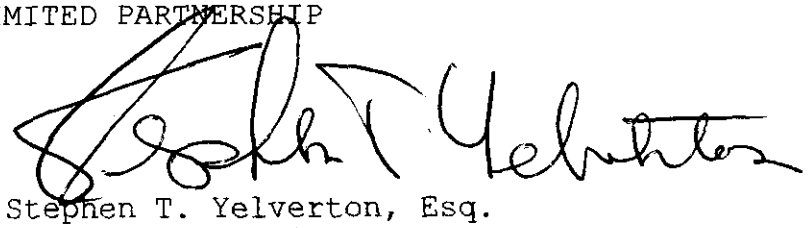
Conclusions

WHEREFORE, Willsyr requests that an investigation be conducted leading to a revocation hearing as to Liberty's repeated misrepresentations as to its ownership in its Form 301 application and in its Form 175 application. Liberty's opposition, and the supporting affidavits of Klemmer (Watts) and Dungan, do not refute the inconsistencies and misrepresentations that it has made over 18 years. They show more evasion and lack of candor.

Liberty's ownership is not what it has been purported to be since 1987. Instead, of a partnership with Klemmer (Watts) as a 35% general partner and Murray as a 65% limited partner, it has been a partnership since at least 1990 with Klemmer (Watts) as a 50% general partner and Dungan as a 50% general partner.

Respectfully submitted,

WILLSYR COMMUNICATIONS,
LIMITED PARTNERSHIP

By: 

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January 23, 2006

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney licensed to practice in the District of Columbia, do hereby certify that on this 23rd day of January, 2006, I have caused to be hand-delivered or mailed, U.S. Mail, first-class, postage prepaid, a copy of the foregoing "Reply to Opposition of Liberty to Supplement" to the following:

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